

REMARKS

Claims 1, 5, 9, 17, 21, and 24 have been currently amended to clarify the present invention. The remaining claims remain unchanged.

I. CLAIM REJECTIONS UNDER 35 U.S.C. § 101

Claims 9, 11-16, 27, and 33-34 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

The Specification is currently amended to limit the claimed invention to exclude media in the wave form. As such, claims 9, 11-16, 27, and 33-34 therefore exclude media in the form of “wave” and are thus believed to have overcome the rejection under § 101.

II. CLAIM REJECTIONS UNDER 35 U.S.C. § 103

A. For claims 1, 4, 9, 12, 25, 27, 31 and 33

The Office Action concludes that the above claims are unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 6,085,333 issued to DeKoning (DeKoning) in view of U.S. Patent No. 6,430,619 issued to Sitaraman et. al. (Sitaraman.) Applicants respectfully traverse.

More specifically, the Office Action cites to **col. 8, ll. 13-14** and **col. 10, ll. 8-9** of DeKoning and concludes that the cited passages disclose the preventing and allowing steps. Applicants respectfully disagree.

1. **Col. 8, ll. 13-14** of DeKoning discloses a generic definition for quiescence. DeKoning explicitly disclaimed, however, the need for lun quiescence in **col. 8, ll. 10-12** immediately above the cited sentence in the Office Action. Thus, the cited passage in **col. 8** gives a generic definition for quiescence that is not used in the embodiment and thus cannot be combined with other teachings to reject claim 1 on 35 U.S.C. § 103(a).

2. Moreover, even when DeKoning requires quiescence as shown in **col. 10, ll. 5-24**, DeKoning’s native controller issues the quiescence command only to ensure that “the RPA

(RAID Parity Assist) area of cache memory is NOT currently in use to complete host I/O requests.” Col. 10, ll. 20-23. And DeKoning ensures the non-use of the RPA area by “terminate *all* host I/O requests to the spare controller” Col. 10, ll. 6-10 (emphasis added). This is, however, not the claimed limitations of claim 1. Claim 1 teaches the method of prevent a resource consumer from starting a new activity **based upon a resource plan**. DeKoning, in contrast, nonselectively terminates all host I/O requests to the controller.

As such, Applicants respectfully submit that DeKoning neither discloses nor renders obvious at least the above claimed limitation of claim 1. Claim 1 is currently amended to clarify the present invention. Claim 4, 9, 12, 25, 27, 31 and 33 either depend from claim 1 or recite similar limitations and are thus believed to be allowable over DeKoning for at least the same reasons.

3. Sitaraman discloses a data communication network with a maximum number of VPN sessions but is absolutely silent on quiescing a system. Sitaraman thus fails to cure the deficiencies of DeKoning. As such, Applicants respectfully submit that DeKoning and Sitaraman, neither alone nor combined, disclose, teach, or suggest at least the above claimed limitations and thus cannot be used to preclude the patentability of claims 1, 9, and their respective dependent claims under 35 U.S.C. § 103(a).

B. For claim 17, 20, 29, and 35

The Office Action rejects the above claims as being unpatentable over DeKoning, Sitaraman, and U.S. Patent No. 6,003,061 issued to Jones et al. (Jones). Applicants respectfully traverse.

1. The Office Action acknowledges that DeKoning and Sitaraman do not disclose a resource plan; yet the Office Action concludes that col. 5, ll. 38-52 and col. 5, l. 66 – col. 6, l. 40 of Jones allegedly discloses such a resource plan. Applicants agree that DeKoning and Sitaraman do not disclose a resource plan. Applicants respectfully disagree, however, that the cited passages of Jones disclose a resource plan.

Col. 5, ll. 38-52 of Jones discloses a “resource planner” which is a computer program that “arbitrates access to the resources,” which is “knowledgeable about local resources,” and which “monitors what activities are allowed to gain access to a resource.” However, the cited passages do not disclose that such a program **specifies an allocation of the resource** among the consumers. In other words, Jones’ resource planner monitors and allocates resources among activities but does not specify any allocation of the resource among consumers. Therefore, Applicants respectfully submit that Jones does not disclose, teach, or suggest at least the claimed limitation of “resource plan.”

2. The Office Action further concludes that **col. 6, ll. 8-17** of Jones disclose the claimed limitations of a “scheduler for allocating the resource . . . according to a resource plan.” Applicants respectfully disagree.

The cited passages of Jones does disclose a “scheduler.” Jones’ scheduler, however, merely **temporally** schedule the use of resources but does not “allocate[e] the resource . . . according to a resource plan.” **Col. 6, ll. 18-40** further evidences Jones’s scheduler’s temporal scheduling of the use of resource. For example, **col. 6** discloses Jones’s scheduler’s advantage of specifying “time specific scheduling constraints” over the legacy program’s “time-general scheduling constraints” for the threads. More importantly, the cited passages are absolutely silent on using the scheduler to allocate system resources. Therefore, Applicants respectfully submit that Jones also fails to disclose the claimed limitation of a “scheduler” of claim 17 and thus fails to cure the deficiencies of DeKoning and Sitaraman.

3. As such, Applicants respectfully submit that DeKoning, Sitaraman, and Jones, neither alone nor combined in any order, disclose, teach, or suggest at least the above claimed limitations of claim 17 and thus may not be used to preclude the patentability of claim 17 and its dependent claims.

C. For claims 3, 5-8, 11, 13-16, 19, 21-24, 32, 34, and 36

The Office Action concludes that claims 3, 5-8, 11, 13-16, 19, 21-24, 32, 24, and 36 stand rejected under 35 U.S.C. § 103(a) as applied to claim 17 above, and further in view of U.S. Patent No. 6,263,359 issued to Fong et al. (Fong). Applicants respectfully traverse.

1. For claim 1 which constitutes the base claim from which claims 3, 5-7:

For claim 5, its dependent claims, and claims reciting similar limitations, Applicants first respectfully submit that DeKoning, Sitaraman, and Jones, neither alone nor combined in any order, disclose, teach, or suggest the claimed limitations of claim 5, its dependent claims, and claims reciting similar limitations for at least the same reasons presented immediately above with respect to claim 17.

2. For claim 8:

For claim 8, its dependent claims, and claims reciting similar limitations, Applicants further respectfully submit that Fong does not cure the deficiencies of DeKoning, Sitaraman, and Jones and thus cannot preclude the patentability of the above claims.

Claim 8 recites at least the following limitations:

replacing the first resource plan with a second resource plan, the second resource plan comprising a first resource consumer group and a second resource consumer group, the second resource plan being adapted to prevent the first resource consumer group from starting new activity on the computer system while allowing the second resource consumer group to start new activity on the computer system, wherein the second resource plan comprises an active session limit that represents a limit on a number of active sessions.

(a) The Office Action states that DeKoning's "native controller" and "spare controller" of a storage system respectively disclose the "first resource plan" and "second resource plan." Applicants respectfully submit that a native / spare storage system controller, which is a hardware, does not even remotely suggest a "resource plan." Moreover, a hardware, such as the native or spare controller in DeKoning, cannot be reasonably interpreted as to "compris[e] a first resource consumer group and a second resource consumer group" which are both software

entities. As such, Applicants respectfully submit that DeKoning does not disclose, teach, or suggest at least the claimed limitations of “resource plan” of claim 8.

(b) As discussed above with respect to claim 17, neither does Jones disclose, teach, or suggest a resource plan. Jones thus fails to cure the deficiencies of DeKoning and Sitaraman.

3. For claim 5:

For claim 5, its dependent claims, and claims reciting similar limitations, Applicants further respectfully submit that Fong does not cure the deficiencies of DeKoning, Sitaraman, and Jones and thus cannot preclude the patentability of the above claims.

Claim 5 is currently amended to change its dependency to its base claim 1. Thus, claim 5 and its dependent claims are believed to be also allowable over the cited references for at least the same reasons as discussed above with respect to claim 1.

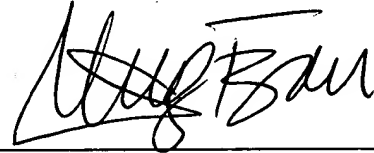
CONCLUSION

Based on the foregoing, all remaining claims are believed in condition for allowance. If the Examiner has any questions or comments regarding this amendment, please contact the undersigned at the number listed below.

The Commissioner is authorized to charge any fees due in connection with the filing of this document to Bingham McCutchen's Deposit Account No. 50-2518, referencing billing number 7010984002. The Commissioner is authorized to credit any overpayment or to charge any underpayment to Bingham McCutchen's Deposit Account No. 50-2518, referencing billing number 7010984002.

Respectfully submitted,

Bingham McCutchen LLP



By: _____

Erich C. Tzou
Reg. No. 56,927

Dated: November 8, 2006

Bingham McCutchen LLP
Three Embarcadero Center
San Francisco, California 94111
Telephone: (650) 849-4962
Facsimile: (650) 849-4800